

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

W.P.(C) 3379/2008

UNION OF INDIA ..... Petitioner

Versus

CENTRAL INFORMATION COMMISSION and ORS..... Respondents

O R D E R 15.02.2010

The grievance of the Union of India in this writ petition is that vide impugned order dated 30th October 2007 the Central Information Commission (CIC) has not confined the order to directing the furnishing of information to the Applicant i.e. the Respondent No.2 herein, but has further required the Central Public Information Officer (CPIO) to institute within three months a system for centrally collecting, collating and monitoring list of Superintendents and Inspectors in sensitive postings in the Central Excise.

The impugned order is very innocuous. It merely requires the development of a system for centrally collecting and collating information concerning the postings of officers on sensitive posts. This cannot really prejudice the Petitioner at all. Even if it is not within the power of the CPIO to bring about a systemic change, such officer can certainly communicate the directions issued by the CIC to those under whom he works. It is for them to take steps to implement such order. Viewed from any angle, the impugned order does not call for any interference. The petition is dismissed.

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

C.R. No. 1051 of 2001.

Date of Decision: 29.1.2006.

Punjab Public Service Commission ...Petitioner.

Versus

Rajiv Kumar Goyal. ...Respondent.

The respondent has earlier filed a suit for declaration to the effect that he is duly qualified and selected for the post of Punjab Civil Service (Executive Branch) in the examination and interview for the post conducted by respondent no.3, the result for which was declined on 7.11.1994. The plaintiff has also sought consequential relief of appointment as member of PCS (Executive) along with seniority with effect from 7.11.1994 or with effect from such other date when other selected candidates were appointed. In reply to the said application, it was the stand of the Commission that the issues raised by the plaintiff relate to internal working of the Commission and that the internal procedure cannot be divulged publicly in the public interest. It has further raised two fold objections. Firstly, that the plaintiff has moved an application before the Civil Court and not to the Information Officer, appointed

under the Act and, therefore, such information cannot be sought by the Civil Court. Secondly, it is pointed out that since the Hon'ble Supreme Court has passed an order in the SLP on 19.4.2005, the Commission is exempted from disclosing any information in terms of Section 8(1)(b) of the Act.

It was held by the Hon'ble Court that mere fact that an application has been filed before the Civil Court, would not take away the right of the applicant to get information in terms of the Statute. It is the matter of fee, which may be claimed before any such information is supplied. But the information cannot be withheld only for the reason that the application has been filed before the Civil Court and not before the Information Officer.

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## **IN THE HIGH COURT OF PUNJAB AND HARYANA**

Decided On: 08.02.2008

Appellants: Ramesh Sharma and Anr. Vs. Respondent: The State Information Commission and Ors.

The short question raised in the instant petition is whether a State Information Commission could impose penalty under Section 20(1) of the Right to Information Act, 2005 (for brevity, 'the Act'). The instant petition is directed against order dated 16.10.2007 (P-I) passed by the State Information Commission, Haryana (for brevity, 'the Commission'), imposing a penalty of Rs. 19,250/- by invoking the provisions of Section 20(1) of the Act for 77 delay in furnishing the information in accordance with mandatory provisions of Sub-section (1) of Section 7 of the Act.

The Commission initiated proceeding's under Section 20(1) of the Act and held that the SPIO has not been able to show that he had acted diligently or delay occurred due to reasonable cause. In fact, SPIO has acted in most casual manner in processing the application with the result that there has been a delay of 77 days in furnishing the information. A perusal of the record show that the application was sent by SPIO in original to the concerned branch without any instructions for obtaining the information from them.

SPIO took no notice of the fact no information had been sent by the concerned branch till 4.12.2006. Even after the receipt of information on 4.12.2006, it was only on 1.02.2007 that partial information was furnished to the appellant where the information was due to be furnished latest by 16.11.2006 under Sub-section (1) of Section 7 of the Act. Thus, there has been delay of 77 days in furnishing the information. The PIO has not been able to show any reasonable cause for this delay.

Therefore, in exercise of powers conferred under Section 20(1) of the RTI Act, a penalty of Rs. 19,250/- for 77 days delay in furnishing the information in terms of Sub-section (1) of Section 7 is imposed on the PIO. It was further held that the Act makes it obvious that the Commission could impose the penalty for the simple reasons of delay in furnishing the information within the period specified by Sub-section (1) of Section 7 of the Act. According to Sub-section (1) of Section 7 of the Act, a period of 30 days has been provided for furnishing of information. If the information is not furnished within the time specified by Sub-section (1) of Section 7 of the Act then under Sub-section (1) of Section 20 of the Act, public authorities failing in furnishing the requisite information could be penalised. It is true that in cases of intentional delay, the same provision could be invoked but in cases where there is simple delay the Commission has been clothed with adequate power. Therefore, the

first argument that the penalty under Sub-section (1) of Section 20 of the Act could be imposed, only in Cases where there is repeated failure to furnish the information and that too without any reasonable cause, is liable to be rejected.

The Commission is empowered under Sub-section (2) of Section 20 of the Act to recommend disciplinary action against such State/Central Public Information Officer under the service rules applicable to such officers. However, the present is not the case of that nature because the Commission has not been invoked under Sub-section (2) of Section 20 of the Act. Hence, the argument raised is wholly misconceived and is hereby rejected. 6. The second submission that lenient view should have been taken on account of failure of the Government to organise any programme to train public authorities as envisaged by Section 26 of the Act is equally without merit. The petitioners cannot avoid the mandatory provisions of Sub-section 1 of Section 20 of the Act on the excuse that any training programme as envisaged by Subsection (1)(a) of Section 26 of the Act has not been organised by the Government encouraging participation of the petitioners in the development and organisation of programmes.

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## **IN THE HIGH COURT OF DELHI AT NEW DELHI**

WP (CIVIL) NO. 7304 OF 2007 & connected matters Dt.: 30.11. 2009.

The challenge to the impugned orders of the CIC, involves interpretation of Sections 8(1), 18 and 19 of the RTI Act.

Section 8(1)(h) of the RTI Act has been interpreted while examining WP(C) No. 7930/2009, Addl. Commissioner of Police (Crime) Vs. Central Information Commission & Another.

The contention of the CIC that statutory relationships or obligations and fiduciary relationships or obligations cannot co-exist, was not acceptable. Statutory relationships as between a Director and a company which is regulated by the Companies Act, 1956, can be fiduciary. Similarly, fiduciary relationships do not get obliterated because a statute requires the fiduciary to act selflessly with integrity and fidelity and the other party depends upon the wisdom and confidence reposed. All features of a fiduciary relationship may be present even when there is a statute, which endorses and ensures compliance with the fiduciary responsibilities and obligations. In such cases the statutory requirements, reiterates the moral and ethical obligation which already exists and does not erase the subsisting fiduciary relationship but reaffirms the said relationship.

A contractual or a statutory relationship can cover a very broad field but fiduciary relationship may be confined to a limited area or act, e.g. directors of a company have several statutory obligations to perform. A relationship may have several facets. It may be partly fiduciary and partly non fiduciary. It is not necessary that all statutory, contractual or other obligations must relate to and satisfy the criteria of fiduciary obligations. Fiduciary relationships may be confined to a particular act or action and need not manifest itself in entirety in the interaction or relationship between the two parties. What distinguishes a normal contractual or informal relationship from a fiduciary relationship or act is as stated above, the requirement of trust reposed, highest standard of good faith and honesty on the part of the fiduciary with regard to the beneficiaries' general affairs or in a particular transaction, due to moral or personal responsibility as a result of superior knowledge and

training of the fiduciary as compared to the beneficiary, resulting in dependence of the beneficiary.

The relationship of a public servant with the Government can be fiduciary in respect of a particular transaction or an act when the law requires that the public servant must act with utmost good faith for the benefit of the Government and confidence is reposed in the integrity of the public servant, who should act in a manner that he shall not profit or take advantage from the said act. However, there should be a clear and specific finding in this regard. Normal, routine or rather many acts, transactions and duties of a public servant cannot be categorized as fiduciary for the purpose of Section 8(1)(e) of the RTI Act and information available relating to fiduciary relationship.

Where information can be furnished without compromising or affecting the confidentiality and identity of the fiduciary, information should be supplied and the bar under Section 8(1)(e) of the Act cannot be invoked. In some cases principle of severability can be applied and thereafter information can be furnished. A purposive interpretation to effectuate the intention of the legislation has to be applied while applying Section 8(1)(e) of the RTI Act and the prohibition should not be extended beyond what is required to be protected. In cases where it is not possible to protect the identity and confidentiality of the fiduciary, the privileged information is protected under Section 8(1)(e) of the RTI Act. In other cases, there is no jeopardy and the fiduciary relationship is not affected or can be protected by applying doctrine of severability.

Even when Section 8(1)(e) applies, the competent authority where larger public interest requires, can pass an order directing disclosure of information. The term —competent authority is defined in Section 2(e) of the RTI Act. Even when Section 8(1)(e) applies, the competent authority where larger public interest requires, can pass an order directing disclosure of information. The term —competent authority is therefore distinct and does not have the same meaning as —public authority || or Public Information Officer (hereinafter also referred to as PIO, for short) which are defined in Section 2(e) and (h) of the RTI Act.

Under Section 8(1)(e) of the RTI Act, the competent authority is entitled to examine the question whether in view of the larger public interest information protected under the Sub-clause should be disclosed. The jurisdiction of PIO is restricted and confined to deciding the question whether information was made available to the public authority in fiduciary relationship. The competent authority can direct disclosure of information, if it comes to the conclusion that larger public interest warrants disclosure. The question whether the decision of the competent authority can be made subject matter of appeal before the First Appellate Authority or the CIC has been examined separately. A decision of the PIO on the question whether information was furnished/available to a public authority in fiduciary relationship or not, can be made subject matter of appeal before the Appellate Authorities including the CIC.

Regarding **SECTION 8(1)(i) OF THE RTI ACT** protecting Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers, it was clarified that

- i) Cabinet papers, which include the records of deliberations of the Council of Ministers, Secretaries and other officers shall be disclosed after the decision has been taken and the matter is complete or over.
- ii) The matters which are otherwise exempted under Section 8 shall not be disclosed even after the decision has been taken and the matter is complete or over.

iii) Every decision of the Council of Ministers is a decision of the Cabinet as all Cabinet Ministers are also a part of the Council of Ministers. The Ministers of State are also a part of the Council of Ministers, but they are not Cabinet Ministers.

Therefore, the plea taken by the First Appellate Authority, the decision of the Council of Ministers are disclosable but Cabinet papers are not, is totally untenable.

The factors to decide the public interest immunity would include (a) where the contents of the documents are relied upon, the interests affected by their disclosure; (b) where the class of documents is invoked, whether the public interest immunity for the class is said to protect; (c) the extent to which the interests referred to have become attenuated by the passage of time or the occurrence of intervening events since the matters contained in the documents themselves came into existence; (d) the seriousness of the issues in relation to which production is sought; (e) the likelihood that production of the documents will affect the outcome of the case; (f) the likelihood of injustice if the documents are not

produced.....||

.....When public interest immunity against disclosure of the State documents in the transaction of business by the Council of Ministers of the affairs of State is made, in the clash of those interests, it is the right and duty of the court to weigh the balance in the scales that harm shall not be done to the nation or the public service and equally to the administration of justice. Each case must be considered on its backdrop. The President has no implied authority under the Constitution to withhold the documents. On the other hand it is his solemn constitutional duty to act in aid of the court to effectuate judicial review. The Cabinet as a narrow centre of the national affairs must be in possession of all relevant information which is secret or confidential. At the cost of repetition it is reiterated that information relating to national security, diplomatic relations, internal security of sensitive diplomatic correspondence per se are class documents and that public interest demands total immunity from disclosure. Even the slightest divulgence would endanger the lives of the personnel engaged in the services etc.

The maxim *salus populi est suprema lex* which means that regard to public welfare is the highest law, is the basic postulate for this immunity. Political decisions like declaration of emergency under Article 356 are not open to judicial review but it is for the electorate at the polls to decide the executive wisdom. In other areas every communication which preceded from one officer of the State to another or the officers inter se does not necessarily per se relate to the affairs of the State. Whether they so relate has got to be determined by reference to the nature of the consideration the level at which it was considered, the contents of the document of class to which it relates to and their indelible impact on public administration or public service and administration of justice itself. Article 74(2) is not a total bar for production of the records. Only the actual advice tendered by the Minister or Council of Ministers to the President and the question whether any, and if so, what advice was tendered by the Minister or Council of Ministers to the President, shall not be enquired into by the court. In other words the bar of judicial review is confined to the factum of advice, its extent, ambit and scope but not the record i.e. the material on which the advice is founded. In *S.P.Gupta case* this Court held that only the actual advice

tendered to the President is immune from enquiry and the immunity does not extend to other documents or records which form part of the advice tendered to the President.

A statement or defence to non-disclosure is not binding on the courts and the courts retain the power to have a prima facie enquiry and balance the two public interest and affairs of the State. The same is equally true and applies to CIC, who can examine the documents/information to decide the question of larger public interest. Section 18(4) of the RTI Act empowers CIC to examine any record under the control of a public authority, while inquiring into a complaint. The said power and right cannot be denied to CIC when they decide an appeal. Section 18 is wider and broader, yet jurisdiction under section 18 and 19 of the RTI Act is not water-tight and in some areas overlap.

It was held that although there is a class of documents whose members are entitled to protection from disclosure irrespective of their contents, the protection is not absolute, and it does not endure for ever. The fundamental and governing principle is that documents in the class may be withheld from production only when this is necessary in the public interest. In a particular case the court must balance the general desirability that documents of that kind should not be disclosed against the need to produce them in the interests of justice. The court will of course examine the question with special care, giving full weight to the reasons for preserving the secrecy of documents of this class, but it will not treat all such documents as entitled to the same measure of protection – the extent of protection required will depend to some extent on the general subject matter with which the documents are concerned.

There is nothing sacrosanct about the immunity which is granted to documents because they belong to a certain class. Class immunity is not absolute or inviolable in all circumstances. It is not a rule of law to be applied mechanically in all cases. The principle upon which class immunity is founded is that it would be contrary to public interest to disclose documents belonging to that class, because such disclosure would impair the proper functioning of the public service and this aspect of public interest which requires that justice shall not be denied to any one by withholding relevant evidence. This is a balancing task which has to be performed by the Court in all cases.

Possibly the only class of documents which are granted immunity from disclosure is those mentioned under Article 74(2) of the Constitution. These are documents or information which are granted immunity from disclosure not because of their contents but because of the class to which they belong. Other documents and information which do not fall under Article 74(2) of the Constitution cannot be held back on the ground that they belong to a particular class which is granted absolute protection against disclosure. All other documents/information is not granted absolute or total immunity. Protection from disclosure is decided by balancing the two competing aspects of public interest i.e. when disclosure would cause injury or unwarranted invasion of privacy and on the other hand if non-disclosure would throttle the administration of justice or in this case, the public interest in disclosure of information. In such cases, the Court/CIC has to decide, which of the two public interests pre-dominates.

In **WRIT PETITION (CIVIL) NO. 16907 OF 2006** 58. Respondent no.1-Sweety Kothari had filed an application seeking following information: — (a) Copies of the advertisements

calling for applications for selection of ITAT members in Calendar Years 2002 and 2003. (b) Recommendation of Interview/Selection Board regarding selection of the said members. (C) Names of the person finally selected as ITAT members in the above-mentioned Calendar Years. Information at serial nos. (a) and (c) have been supplied but information at serial no.(b) was denied by the Public Information Officer and the first appellate authority. Central Information Commission has directed furnishing of the said information. The contention of the petitioner herein is that the final selection is approved by the Appointment Committee of the Cabinet (ACC) and therefore Section 8(1)(i) of the RTI Act was attracted, was rejected. It was the contention of the public authority that Appointment Committee of the Cabinet functions under the delegated powers of the Cabinet and for all practical purposes it is co-extensive with the Cabinet's powers attracts exemption under Section 8(1)(i) of the RTI Act.

It was further held that appointments have already been made and therefore information should be disclosed and put in public domain. The recommendations made by the interview/selection board, is one of the material which is before the Appointment Committee of the Cabinet. Therefore the recommendations are not protected under Article 74(2) of the Constitution of India which grants absolute immunity from disclosure of the advice tendered by Ministers and the reasons thereof. After appointments have been made, even if Section 8(1)(i) applies, the first proviso comes into operation.

In **WRIT PETITION (CIVIL) NO. 4788 OF 2008** 62. Central Information Commission has directed furnishing of the information under clauses (b) to (e) to the Respondent no.2- Brig. Deepak Grover (ret'd.): —(a) The ACR profiles of all officers of 1972 batch of Engineer Officers who were considered in the Selection Board No.1 held in September 05 || (b) The weightage, if any, given over and above the ACR grading to each of the officers considered in the Selection Board referred to at Para 3(a) above. (C) The final comparative graded merit of all the Engineer Officers of the 1972 batch placed before the Selection Board referred to at Para 3(a) above. (d) The recommendations of the Selection Board referred to at Para 3(a) above with respect to all the Engineer officers of the 1972 batch considered by the Board. (e) The No. of Engineer Officers considered vis-à-vis those approved for promotion by the Selection Board No.1 for the 1968, 1969, 1970, 1971, 1972 and 1973 batches.

**Information (a) has been denied U/Sec.8(1)(e) and (j) of the RTI Act.**

Central Information Commission referred to the judgment of the Supreme Court in Civil Appeal No. 7631/2002 titled **Dev Dutt versus Union Public Service Commission and others** but it was observed that this decision was not applicable as the information seeker had asked for third party ACRs. Thus information (a) was denied. CIC made reference to their decision dated 13th July, 2006 in the case of **Gopal Kumar versus Ministry of Defence** (Case No. CIC/AT/A/2006/00069) and it was observed that disclosure of contents of ACR is not exempted under Section 8(1)(j) but the principle of severability under section 10 of the RTI Act should be applied. Informations (b) to (e) were directed to be furnished. The Central Information Commission did not permit the petitioner herein to rely upon Section 8(1)(a) of the RTI Act as the said Section was not invoked by the Public Information Officer or the first appellate authority. The said approach and reasoning is not acceptable. Public authority is entitled to raise any of the defences mentioned in Section 8(1) of the RTI Act before the Central Information Commission and not merely rely upon the provision

referred to by the Public Information Officer or the first appellate authority to deny information. An error or mistake made by the Public Information Officer or the first appellate authority cannot be a ground to stop and prevent a public authority from raising a justiciable and valid objection to disclosure of information under Section 8(1) of the RTI Act. The subject matter of appeal before the Central Information Commission is whether or not the information can be denied under Section 8(1) of the RTI Act. Decision in **Dev Dutt case** (supra) holds that public servant has a right to know the annual grading given to him and the same must be communicated to him within a reasonable period. However, the said ratio as per para 41 of the said judgment is not applicable to military officers in view of the decision of the Supreme Court in **Union of India versus Maj. Bahadur Singh** (2006) 1 SCC 368. The present case is one of a military officer. Further, the information seeker wants to know observations in and contents of his ACR and not merely his gradings. The petitioners herein have also relied upon Section 8(1)(e) and (j) of the RTI Act in addition to Section 8(1)(a) of the RTI Act.

It cannot be said that comments in ACRs in all cases have to be furnished as a matter of right and in no case Section 8(1)(e) or (j) of the RTI Act will apply. Each case has to individually examined keeping in mind the factual matrix. While applying Section 8(1)(j) the two interests have to be balanced. As the matter is remanded back on the question of applicability of Section 8(1)(a) of the RTI Act, the petitioners herein will be entitled to raise objection under Sub-section (e) and (j) of the RTI Act before the Central Information Commission.

In **WRIT PETITION (CIVIL) NO. 9914 OF 2009** 68. Respondent no.2-Maj. Rajpal (retd) was invalidated from army service on medical grounds on 26th August, 1992. On 14th May, 2007 he asked for the following information:- — (i) List of senior service officers who formed the —selection panel ||. (ii) List of affected service officers placed before the —selection board ||. (iii) My medical category listed and placed before the —selection board ||. (iv) Board proceedings and its subsequent disposal duly enclosing the relevant AO/AI's on the subject. (v) A copy of Military Secretary-14 (MS-14) Branch letter No. 55821/Gen/MS-14/B dated 21 August, 1992 addressed to 664 Coy ASC Tk tpnr type =C', C/O 56 APO, Subject : Photograph Officers.

Information was partly denied by the Public Information Officer and the first appellate authority. On second appeal by the impugned Order dated 12th February, 2009 the Central Information Commission has directed furnishing of following information :- —

- (i) A list of senior officers who constituted the Selection Board. (ii) A copy of the Board proceedings of the Selection Board including the copy of the record in the recommendation of the Board was subsequently dealt with.

It is mentioned in the writ petition that the respondent no.2 was considered for promotion to the rank of Lt. Colonel (Time Scale) in June 1990 but because of low medical category he was not granted the said grade. The period in question admittedly relates to the year 1990. The respondent no.2 has been adversely affected and was denied promotion as a result of the said board proceedings. As held above the test of larger public interest cannot be put in any strait jacket but is flexible and depends upon factual matrix of each case. It is difficult to comprehend and accept that any public interest would be served by denying information



to the respondent no.2 with regard to selection board proceedings and record of how the recommendations of the selection board was subsequently dealt in an old matter relating to the year 1990. The matter is already stale and of no interest and concern to others, except respondent no.2.

Passage of time since the creation of information may have an important bearing on the balancing of interest under section 8(1)(j) of the RTI Act. The general rule is that maintaining exemption under the said clause diminishes with passage of time. The test of larger public interest merits disclosure and not denial of the said information. However, direction to disclose names of the officers who constituted the said panel could not have been issued without complying with provisions of Section 11 and Section 19(4) of the RTI Act. The said procedure has not been followed by the CIC. I am however not inclined to remand the matter back on the said question as disclosure of the said names would result in unwanted invasion of privacy of the said persons and there is no ground to believe that larger public interest would justify disclosure of said names. The impugned order passed by the CIC dated 12th February, 2009 is non-speaking and no-reasoned and does not take the said aspects into consideration.

The Writ Petition is accordingly partly allowed and the petitioner need not disclose the name of the officers who constituted the selection panel and applying the doctrine of severability, copy of the board minutes and subsequent record of recommendation should be supplied without disclosing the names of the officers.

In **WRIT PETITION (CIVIL) NO. 7304 OF 2007** Central Information Commission has allowed the appeal of Respondent no.1-Bhabaranjan Ray and directed that he should be shown his ACRs together with those of third parties who had been promoted to Senior Administrative Grade (SAG).

It was held by the Hon'ble Court that there is no examination or consideration of the relevant provisions of Section 8(1) of the Act and it may be noticed that disclosure of information relating to third parties requires compliance of procedure under Sections 11 and 19(4) of the RTI Act. Grades in ACRs must be disclosed in the light of the judgment of the Supreme Court in **Dev Dutt** (supra) but the question of disclosure of internal comments on the officers has to be decided in each case depending on the factual background. No universal applicable rule as such can be laid down. In some cases it is possible that the records may be denied or may be made available after erasing the name of the officer who have given the comments. Respondent no.1 in his counter affidavit has pointed out several facts on the basis of which it was submitted that larger public interest demands disclosure of the said information. He has referred to the Order dated 25th Feb., 2005 passed by the Central Administrative Tribunal, Calcutta directing the petitioner herein to hold a review DPC without taking into consideration the un-communicated adverse entries below the bench mark. He has also referred to the order passed by the Calcutta High Court dated 7th October, 2005 upholding the said decision and has submitted that the petitioners inspite of the said orders have even in the review DPC rejected his case for promotion to Sr. Administrative Grade without recording any reasons. It is stated that this had compelled the respondent no.1 to file another petition before the Central Administrative Tribunal. 82. Accordingly, the matter is remanded back to the Central Information Commission for fresh adjudication keeping in view the above discussion.

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## **IN THE HIGH COURT OF DELHI AT NEW DELHI**

W.P.(C) 8529/2009 Date of judgment: 30.04.2009

### **Issues for Determination-**

The writ petitioners, *The Institute of Chartered Accountants of India (ICAI)*, claims to be aggrieved by an order of the Central Information Commission (CIC) dated 23.12.2008 to the extent that the Commission directed disclosure of the applicant complainant's answer sheet to the information applicant. The applicant had elicited various kinds of information, including a copy of the answer sheet of the examination attempted by him.

### **Decision-**

The writ petition was dismissed as misconceived and directed the petitioner to work-out a regime where inspection can be afforded to the respondent/applicant, if such a proposal is acceptable to him.

Two cases were referred while examining the issues before the Hon'ble Court, though there is no discussion or mention of the RTI Act and the judgments were not examining information applications under the RTI Act.

The Supreme Court seems to have excluded the possibility of accessing such class of information in *President, Board of Secondary Education, Orissa & Anr. v. D. Suvankar & Anr.* 2007 (1) SCC 603 wherein it states as follows:

*"The Board is in appeal against the cost imposed. As observed by this Court in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkurmar Sheth, it is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and re-evaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It would be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to pragmatic one was to be propounded. In the above premises, it is to be considered how far the Board has assured a zero-defect system of evaluation, or a system which is almost foolproof."*

While upholding the right of a candidate, seeking copies of his answer sheets in public examination held even by statutory bodies examined and considered the judgment of the Supreme Court in *Suvankar's case (supra)*; the relevant discussion of the Division Bench of Calcutta High Court is as follows:

*"There is an understandable attempt on the University's part to not so much as protect the self and property of the examiner, but to keep the examiner's identity concealed. The argument made on behalf of the public authorities before the Central Information Commission has, thankfully, not been put forward in this case. This University has not cited the fiduciary duty that it may owe to its examiners or the need to keep answer scripts out of bounds for examinees so that the examiners are not threatened. A ground founded on*

*apprehended lawlessness may not stultify the natural operation of a statute, but in the University's eagerness here to not divulge the identity of its examiners there is a desirable and worthy motive--to ensure impartiality in the process. But a procedure may be evolved such that the identity of the examiner is not apparent on the face of the evaluated answer script. The severability could be applied by the coversheet that is left blank by an examinee or later attached by the University to be detached from the answer script made over to the examinee following a request under Section 6 of the Act. It will require an effort on the public authority's part and for a system to be put in place but the lack of effort or the failure in any workable system being devised will not tell upon the impact of the wide words of the Act or its ubiquitous operation."*

It was opined that though the Supreme Court in the above decision held that there is no right to claim disclosure of answer sheets or copies, and the same is not part of the Right to Freedom of Expression and, therefore, implicitly excluded from the RTI Act; the mere fact that the statement of objects of, or the long title to the RTI Act mentions that it is a practical regime of the right to information for citizens; would not mean that a cribbed interpretation has to be placed on its provisions, on the same notion of implicit exclusion of that which would legitimately fall within Article 19(1)(a). As the Act confers positive rights which can be enforced through its mechanism, this Court should be extremely slow in interpreting such rights, dealing with personal liberties and freedoms on the basis of some inarticulate premise of a judgment.

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## **IN THE HIGH COURT OF DELHI AT NEW DELHI**

WP(C) No.3114/2007 Date of decision : December 03, 2007

The writ petitioner is seeking partial quashing of an order of the Central Information Commission and also for a direction from this Court that the information sought by him under the RTI Act, should be supplied with immediate effect.

Decision-

This Court took a serious note of the two year delay in releasing information, the lack of adequate reasoning in the orders of the Public Information Officer and the Appellate Authority and the lack of application of mind in relation to the nature of information sought. And set aside the order of the CIC in so far as it directs to withhold information until tax recovery orders are made, because Recovery in tax matters, in the usual circumstances is a time consuming affair, and to withhold information till that eventuality, after the entire proceedings, despite the ruling that investigations are not hampered by information disclosure, is illogical.

Petitioner made repeated requests to the Director of Income Tax (Investigation) to know the status of the hearing and Tax Evasion Petition (TEP) proceedings. The application was rejected by the PIO under Section 8 (1) and Sec.8(1)(h) of the Act, by reasoning that the information sought was personal in nature, relating to dowry and did not further public interest, and that it would impede the process of investigation. The CIC allowed the second appeal and set aside the rejection of information and the exemption clause 8(1) (j) and further held that "*as the investigation on TEP has been conducted by DIT (Inv), the relevant report is the outcome of public action which needs to be disclosed. This, therefore, cannot be exempted u/s 8(1) (j) as interpreted by the appellate authority. Accordingly, DIT (Inv)*

*is directed to disclose the report as per the provision u/s 10(1) & (2), after the entire process of investigation and tax recovery, if any, is complete in every respect.” Subsequently, in pursuance of the said order, the petitioner filed a contempt petition before the CIC for non compliance of order. CIC issued a notice to the concerned PIO asking for comments with respect to non-compliance of the order and to show cause as to why a penalty should not be imposed as per Section 20 of the Act.*

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## **IN THE HIGH COURT OF DELHI AT NEW DELHI**

WP (C)No.876/2007 Date of Decision: 07.01.2010

The common question involved is as to the applicability of the Right to Information Act, with broad reference to whether the writ petitioners are “Public Authorities” within the meaning of the term under Section 2(h) of the said Act. The petitioner, IOA (Indian Olympics Association) is the apex body in the field of Olympic sports in the country and a society registered under the Indian laws. It is an autonomous body controlled and supervised by the International Olympic Committee. The first respondent applied for information from the Central Government, seeking particulars relating to the hierarchy of the authorities set-up under the Act, status of the latest audited accounts of the IOA for the years 2004-05, 2005-06 and all particulars of expenses incurred by the IOA in connection with the visits by anyone to Melbourne or any other destination in connection with the Commonwealth Games, from 1st January, 2006 to 15th April, 2006. Not receiving the reply of the kind he expected, the first respondent/information applicant approached the third respondent (referred to as “the CIC”) with a complaint. The petitioner, and second respondent (referred to as “the Central Government”), made submissions as to the maintainability of the proceedings before the CIC. The petitioner contends that it is completely autonomous from the governmental authorities and relies upon specific provisions of the Olympic Charter. The CIC, by its impugned order dated 28.11.2006, brushed-aside IOA’s objections and decided that it was a public-authority and thus obliged to comply with the provisions of the Act. *Whether the Government provides substantial funds either directly or indirectly to IOA to discharge its functions is the issue for consideration. CAG conducts the audit of IOA and therefore, it would be appropriate to apply the definition given in Section 14(1) of CAG Act-1971 for the term “substantially financed”. According to this Section, when the loan or grant by the government to a body/authority is not less than Rs 25 lakhs and the amount of such loan or grant is not less than 75% of the total expenditure of that body/authority, then such body/authority shall be deemed to be substantially financed by such grants/loans. Since IOA is found to be substantially financed either directly or indirectly by the funds provided by the Government, it was held that it is a public authority governed by the provisions of the RTI Act.*

The crucial role of access to information here cannot be understated. It is in this context that Section 2 (h) recognizes that non-state actors may have responsibilities of disclosing information which would be useful, and necessary for the people they serve, as it furthers the process of empowerment, assures transparency, and makes democracy responsive and meaningful.

4. The High Court of Kerala interpreted the Kerala Cooperative Societies Act and ruled that the RCS had access to the information held by the Societies. Sec 2(h) of the RTI Act read

along with Sec 2(f) clearly meant that the RCS can access the information held by the societies. Further, several clauses of the KCS Act made it clear that RCS exercised "control" over the societies and therefore information could be sought even if the societies were private bodies. The Court has also ruled that the term **"funds provided by the appropriate Government "** had to be interpreted in the widest sense as: **".....is not necessarily providing funds from what belong to the appropriate Government , either exclusively or otherwise, but also those provisions which come through the machinery of the appropriate Government , including by allocation or provision of funds with either the concurrence or clearance of the appropriate Government . This view emanates on a plain reading of the provision under consideration, having regard to the object sought to be achieved by the RTI Act and in this view, the said provision has to be read to take within its sweep all funds provided by the appropriate Government, either from its own bag or funds which reach the societies through the appropriate Government or with its concurrence or clearance.**

The court also interpreted the word **"substantial"**, as used in Sec 2(h) of the RTI Act: **"...The word "substantial" has no fixed meaning. For the purpose of a legislation, it ought to be understood definitely by construing its context. Unless such definiteness is provided, it may be susceptible to criticism even on the basis of Article 14 of the Constitution..... essentially advises that the provision under consideration has to be looked into from the angle of the purpose of the legislation in hand and the objects sought to be achieved thereby, that is, with a purposive approach. What is intended is the protection of the larger public interests as also private interests. The fundamental purpose is to provide transparency, to contain corruption and to prompt accountability. Taken in that context, funds which the Government deal with, are public funds. They essentially belong to the Sovereign, "We, the People". The collective national interest of the citizenry is always against pilferage of national wealth. This includes the need to ensure complete protection of public funds. In this view of the matter, wherever funds, including all types of public funding, are provided, the word "substantial" has to be understood in contradistinction to the word "trivial" and where the funding is not trivial to be ignored as pittance, the same would be "substantial" funding because it comes from the public funds. Hence, whatever benefit flows to the societies in the form of share capital contribution or subsidy, or any other aid including provisions for writing off bad debts, as also exemptions granted to it from different fiscal provisions for fee, duty, tax etc. amount to substantial finance by funds provided by the appropriate Government, for the purpose of Section 2(h) of the RTI Act."**

The court has then gone into various sections of the KCS and concluded that there is enough scope for the "appropriate government" to administer, interfere, control and finance the cooperative societies. It concludes this argument with: **".....it has to be treated that those societies are non-governmental organisations substantially financed, directly or indirectly by funds provided by the appropriate Government . This view will only give effect to, and further the intention of the legislature and the objects sought to be achieved by having the RTI Act in place."**

It has also noted that a large amount of finance reaches the societies through cooperative banks, credit societies, etc., which are themselves either controlled by the Government or

financed by it. The finances also have to either be recommended by the Government or actively allotted/allocated by it.

All this has led the court to the conclusion that Societies registered under the KCS are Public Authorities under the RTI Act.

The court has further clarified that:

If any individual society refuses to provide information directly to a applicant contending that it is not substantially financed by the government, the applicant can complain under Sec 18(1) to the SIC, which has the powers to decide whether that particular society is a PA or not.

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**The Delhi High Court** has ruled that any public authority, if funded by the government by any means, falls under the ambit of the Right to Information (RTI) Act.

Justice S. Muralidhar, while dismissing the appeal of the Indian Railway Welfare Organisation (IRWO), said: "There is substantial financing of the IRWO through funds directly or indirectly provided by the Ministry of Railways. And, therefore, it falls under the ambit of the RTI Act."

The court was hearing an appeal of the IRWO against a Central Information Commission (CIC) order that asked the organisation to disclose certain information to an applicant, and said that the IRWO is a public authority.

On the other hand, IRWO stated, "It is a society registered under the Societies Registration Act and its principal object is to promote and provide dwelling units all over India to serving and retired railway personnel and their widows on a no profit no loss basis."

"It is submitted that IRWO receives no grant from the Railway Board or the central government. It received a loan of Rs.10 crore from the Ministry of Railways which has since been repaid. A loan of Rs.6 crore was taken from the Railway Public Sector Undertakings (PSUs) of which only Rs.1.2 crore remains to be paid," IRWO stated.

"The Ministry of Railways exercises no control, whether administrative or financial, over the working of the IRWO. There are only four officials in the Ministry of Railways in ex-officio capacity, out of the total 19 members in the governing body of the IRWO, while the others are non-government members," counsel for the IRWO stated.

However, the court did not agree with the IRWO's submission and said: "As regards the control of IRWO, this court finds that the key posts in IRWO are held by officials of the Railway Board although in an ex-officio capacity and that points that the IRWO is under the control of the Ministry of Railways."

"As regards the financing, it is important to note that apart from the past financing through loans by the Indian Railways and the Ministry of Railways, even the recent proposal from the Ministry of Railways for a loan to the IRWO has not been rejected," the court observed.

"This distinguishes IRWO from any other society that may not have similar access to government funds," the bench said while directing IRWO to disclose the information under the RTI.

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**The Delhi High Court** has ruled that income tax returns and medical records do not fall under the purview of Right to Information (RTI) Act "unless public interest is attached" holding in its landmark judgment that the Chief Justice of India (CJI) came under the ambit of the transparency law.

Quoting an American writer that "one man's freedom of information is another man's invasion of privacy", a full bench of Chief Justice Ajit Prakash Shah and Justices S. Muralidhar and Vikramjit Sen said: "Personal information including tax returns, medical records etc. cannot be disclosed in view of Section 8(1)(j) of the act."

"If, however, the applicant can show sufficient public interest in disclosure, the bar (preventing disclosure) is lifted and after duly notifying the third party (the individual concerned with the information or whose records are sought) and after considering his views, the authority can disclose it," they said.

Highlighting how the right to information often clashes with the right to privacy, the court noted that the government stores a lot of information about individuals, supplied by the individuals themselves in applications made for obtaining various licences, permissions including passports, or through disclosures such as income tax returns or for census data.

"When an applicant seeks access to government records containing personal information concerning identifiable individuals, it is obvious that these two rights are capable of generating conflict," the court said, adding that "in some cases, this will involve disclosure of information pertaining to public officials. In others, it will involve disclosure of information concerning ordinary citizens. In each instance, the subject of the information can plausibly raise a privacy protection concern."

However, the court ruled that notes made by the judges do not come under the RTI act, the court said the notes taken by judges while hearing a case cannot be treated as final views expressed by them on the case. "They are meant only for the use of the judges and cannot be held to be a part of a record 'held' by the public authority. However, if the judge turns in notes along with the rest of his files to be maintained as a part of the record, the same may be disclosed."

Maintaining that the right to information may not always have a linkage with the freedom of speech, the court said: "If a citizen gets information, certainly his capacity to speak will be enhanced."

"But many a time, he needs information which may have nothing to do with his desire to speak. He may wish to know how an administrative authority has used its discretionary powers. He may need information as to whom the petrol pumps have been allotted. The

right to information is required to make the exercise of discretionary powers by the executive transparent and, therefore, accountable because such transparency will act as a deterrent against unequal treatment," the court said.

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**The Delhi High Court** has ruled that the National Stock Exchange (NSE) was a public authority and was bound to reveal information under the Right to Information (RTI) Act. Justice Sanjiv Khanna dismissed NSE's plea that it could not be forced to disclose information under the transparency law since it was an autonomous body and not controlled by the government. The court upheld the decision of the Central Information Commission (CIC), which had declared stock exchanges a public authority.

The CIC, in 2007, had held that stock exchanges were "quasi" governmental bodies that are bound to disclose information to the public under the RTI Act. "A stock exchange, being a quasi-governmental body working under the statute and exercising statutory powers, has to be held to be a public authority under the Act," the Commission had said, while directing the NSE to put in place a mechanism for the purpose.

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**2010 (3) ALD 251 IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD. L.NARASIMHA REDDY, J. 9th February, 2010. WP.No.284 of 2010.**

Daram Raviraj v. Chief Information Commissioner, A. P. Information Commission, Hyderabad and others

Right to Information Act 2005 – Section 20 – Penalty – Imposition of no scope for, when information sought for by petitioner already supplied and intention of petitioner appears to harass respondents, than to seek information – Having put machinery into motion, petitioner chose not to appear before Chief Information Commissioner/RI on stipulated date – Such misadventure on part of petitioner needs to be contained by award of costs – Further, nature of information sought for by him such that, instead of being of any help to individual beneficiaries, it is prove to be used as a handle, to derive undue benefits – Requiring Information Officer and appellate authority to attend such queries would have its own impact upon their regular functions.

Facts:

Petitioner filed appeal alleging that he did not receive any information within stipulated time, and thereafter filed second appeal before Chief Information Officer / RI – Notices dt.4.6.2009 issued to petitioner and Information Officer/R3, requiring them to appear before R1 on 9.6.2009 – On 4.6.2009, petitioner delivered a bunch of papers through covering letter dt.20.5.2009, addressed by R3-Perusal of the same disclosing that information sought by petitioner already information sought by petitioner already sent to him on 3.6.2008 by courier and the same acknowledged by petitioner on 4.6.2009 – petitioner, therefore, did not appear before RI – In view of said developments R1 passed order closing appeal – Writ petition – Filing of, complaining of failure of R1 to impose penalty as provided under section 20 of Act.

Held:



This court is of the view that the petitioner has taken the respondents for a ride. His intention appears to be more to harass, if not blackmail them, than to seek any information. The record discloses that the respondents have identified about 600 beneficiaries for providing house sites and necessary steps were taken to provide house sites. They did continue their efforts, notwithstanding shortcomings at the institutional and organizational level. There would have been certainly justification for any deserving person, who is left out to approach respondents 2 and 3. Even the petitioner could have espoused the cause of such persons. The nature of information sought for by him is such that, it is not at all of any help of individual beneficiaries. On the other hand, it is prone to be used as a handle, to derive undue benefits.

Requiring respondents 2 and 3 to attend such queries would have its own impact upon their regular functions. Deterrence under the Act is so severe that even where the aggrieved persons pursue their matters with respondents 2 and 3, the resultant proceedings are sent by ordinary post, whereas, in the instant case, all the information requested by the petitioner was sent through courier. It is doubtful whether the dispatch would be made through courier from Tahsildar Office, even to the Government. When such was the precedence accorded to the petitioner, he does not appear to have been satisfied with that. He wanted to score additional points and satisfy his ego, and would penalty to be imposed upon respondents 2 and 3.

The petitioner did not deny the contents of the letter, dated 20.5.2009, served upon him on 4.6.2009. Hence, they have to be treated as correct, and there is no reason why the 3rd respondent would say something contrary to record. Thus, it emerges that the information sought for by on 3.6.2008, and despite the same, he proceeded to file appeal, and thereafter second appeal.

The lack of bonafides or uncertainty on the part of the petitioner is evident from the fact that he did not choose to appear before the 1st respondent, having put the machinery into motion. One can imagine the extent of dislocation and the expenditure involved in requiring the 3rd respondent to appear before the 1st respondent by travelling all the way from Vuyyuru to Hyderabad. The petitioner merrily remained at his house. This Court is of the view that, a time has come to contain such misadventures.

Result – Writ petition dismissed with cost of Rs.10,000/- Amount to be remitted to account of R3, and he shall utilize the same for procuring stationery and related items, for furnishing information prayed for under Act.

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## **HIGH COURT OF ORISSA AT BHUBANESWAR**

Nandita Giri and 11 Ors. Vs. Central Information Commission represented by its Secretary and 7 Ors.

WP(C) No. 440/2006 Dt. 14.02.2006

The High Court of Orissa in a ruling on a petition before it stated that it is NOT possible for a Court to give any directions for amending an Act or statutory Rules.

The petition had prayed that the Court to issue a writ of Mandamus to, the Government of India and to the Government of Orissa to make specific provisions / Rules for specifying a

time limit for disposal of complaint u./s. 18 by, both, the Central Information Commission and the Orissa State Information Commission, for such a statutory provision was not present in the 'RTI Act, 2005'. The petition requested that the Court may, further, pass any other Writ(s) / Direction(s) / Order(s) as the Hon'ble Court deems proper.

The petitioner had further stated that time limits for disposal of complaints by Information Commissions could be stipulated by way of amending the 'RTI Act, 2005' and inserting specific provisions in it specifying time limits for disposal of complaints. In support of this contention, the petitioner's counsel cited a judgment of the Supreme Court in *Union of India v. Association for Democratic Reforms and Anr.* 2002 AIR (SC) 2112:2002(6) SRI 553 : 2002 (5) 5CC 294 : 2002(4) JT 501 : 2002(4) Scale 297:2002(4) Supreme 1.

The Court held that the contention of the petitioner's counsel was misconceived. Toward this the Court cited para 19 of the same judgment of the Supreme Court and maintained that, as ruled by the apex Court, it is for the Parliament to amend an Act and Rules and the Court cannot ask it to do so.

Noting that separate complaints had been filed earlier – by the petitioner – with the Central Information Commission and the Orissa State Information Commission after its RTI applications to a Central Public Authority and to a State Public Authority for supply of information under S. 6 of the 'RTI Act, 2005' had been refused, the Court held that "*the writ petition is otherwise bad for mis-joinder of the cause of action and the parties*".

The writ petition was, accordingly, dismissed.

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## **HIGH COURT OF KERALA**

Canara Bank vs. Central Information Commission and Anr.

WP(C) No. 9988/2007 Dt. 11.07.**2007**

Canara Bank (a nationalized bank) had challenged the order of CIC directing it to furnish information requested by employees of the Bank regarding postings, promotions, transfers, appointments of various staff and related information.

The Bank had denied the information requested saying that only those information mentioned in S. 4 of the Act need to be furnished – more specifically that in respect of the employees of a PA, only such information enumerated in S. 4(b)(x) is required to be published and therefore no other information is required to be furnished by any PA in respect of employees of that PA.

It also contended that the information requested is exempted from disclosure u/s 8(1) (e) & (j) and that the information is so voluminous that it is physically impossible to furnish the same without employing considerable manpower and time.

The respondent's / defendant's counsel contended that reading together S. 2(f) & S. 3, makes it abundantly clear that all information coming within the definition of the word "information" as defined in the Act has to be supplied to a citizen at his request unless specifically exempted from disclosure under other provisions of the Act.

The Court opined that the stand of the petitioner (Canara Bank) was not supported by the provisions of the Act. A reading of S. 2(f), S. (3) and S. 4(1)(b), it was clear that the information mentioned in S. 3 is NOT circumscribed by S. 4 at all.

S. 4 only lays down certain obligations that PAs are required to perform in addition to the duty to furnish information to the citizen – when requested for. These obligations are to be compulsorily performed apart from the other liability on the part of the PA to supply information to the citizen when requested for.

These obligations are to be compulsorily performed apart from the other liability on the part of the public authority to supply information available with them as defined in the Act, subject of course to the exceptions laid down in the Act.

Information detailed in S.4 has to be compulsorily published by the PA on its own without any request from anybody.

Further there is no indication anywhere in the Act to the effect that information as defined in S. 2(f) is confined to those mentioned in S. 4 of the Act.

Information related to posting, transfer and promotion of staff of a bank does not pertain to any fiduciary relationship of the bank with its employees. Such information cannot be said to be held in trust by the bank on behalf of its employees and therefore cannot be exempted. In fact, without knowing this information, an employee cannot know his rights vis-à-vis other employees. Information like transfer guidelines is something that any member of the staff is entitled to know apart from the Act. Further such information is, necessarily, to be divulged to have an informed citizenry and transparency of information which are vital to the functioning of the bank and to contain corruption so as to hold the bank which is an instrumentality of the State, accountable to the people, which are the avowed objects of the Act as proclaimed in the preamble of the Act.

That information relating to any person in respect of his illegal activities, especially, corruption or misconduct be withheld on the basis of exemption of personal information u/s 8(1)(j) is not contemplated under the Act. Information mentioned in S. 8(1)(j) is personal information, which is so intimately private in nature that its disclosure would not benefit any other person, but would result in the invasion of privacy of that person.

The requested information is required to effectively pursue one's claim of transfer and it does not cause unwarranted invasion of privacy of other employees in any manner in so far as it is not information which those employees can keep to themselves. If the employees are to contest that the transfers are in violation of their rights.... Then they should necessarily have the information. Moreover, in keeping wit the proviso of this section that information which cannot be denied to the Parliament or a State Legislature shall not be

denied to any person (which nullifies the impact of the main provision to a great extent), the information in question is by no stretch of imagination exempted information u/s 8(1)(j).

The applicant has specifically stated the information required and the duration (5 years) for which it is required. The information therefore cannot be said to be voluminous that providing it would require tremendous manpower and time. In any event, when the Act does not exempt voluminous information from disclosure, it cannot be denied on that ground.

It was also note that the PIO's original communication of denial did not contain any of the contains raised before the Court... The present contentions were also not mentioned in a communication to the applicant 2 years later.... Hence, these contentions are only an afterthought to deny the petitioner information which he is legitimately entitled to have.

The writ petition was, accordingly, dismissed. CIC was a respondent in this case.

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### **HIGH COURT OF KERALA (ERNAKULAM)**

Canara Bank vs. Central Information Commission and C. S. Shyam

W A No. 2100 / 2007 Dt. 20.09.2007

The aforesaid decision of a single judge of the High Court came up as an appeal before a two-judge bench (including the Chief Justice) of the Court at Ernakulam, where the Bank reiterated its submission that the Bank would require tremendous manpower and sufficient time to gather the information. The appeal was allowed.

The bench completely agreed with the judgment of the single judge earlier and opined that providing the information sought would not require either tremendous manpower or time. Hence, this (only) contention of the Bank's counsel was found to be without any merit and rejected. The Court directed the appellant-bank to furnish the information within a month's time from the date of the decision as also to provide the guidelines for effecting transfer of the clerical staff if such guidelines are available with them.

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### **HIGH COURT OF DELHI AT NEW DELHI**

Bhagat Singh vs. Chief Information Commissioner and Ors.

WP(C) No. 3114/2007 Dt. 03.12.2007

The petitioner had sought partial quashing of an order of the CIC and that the information requested by him be submitted to him immediately.

The petitioner was facing a criminal complaint lodged by his wife that she had spent / paid as dowry an amount of Rs. 10,00,000/-. Alleging that these claims were false, the petitioner had approached the Income Tax Department with a tax evasion petition. In November 2005, the petitioner filed an RTI application requesting for information about the disposal of the TEP and other source of income of his wife.

The application was rejected [u/s 8(1)(j)] by the PIO concerned by reasoning that the information sought was personal in nature, relating to dowry and did not further public interest. Later, the 1<sup>st</sup> Appellate Authority concurred with the PIO's decision and added that the information could also be denied under S. 8(1)(h) as information which would impede the process of investigation or apprehension or prosecution of offenders.

The CIC in its decision on the 2<sup>nd</sup> appeal set aside the rejection of information u/s 8(1)(j). Further, it held that the TEP investigation report is the outcome of public action which needs to be disclosed and directed DIT(Inv) to do so u/s 10(1) and (2) after the entire process of investigation and tax recovery, if any, is complete in every respect.

The petitioner contended that CIC was correct in allowing for disclosure of information u/s 8(1)(j), but incorrectly applied S. 8(1)(h), submitting that the disclosure of the requested information could not in any way impede the investigation process and the respondents have NOT given any reasons as to how such disclosure would hamper investigation. The petitioner contended that S. 10 of the Act pertaining to severability of exempted information could have been applied and he could have been given non-exempted information – something he had brought to the notice of the PIO and the FAA as well.

The petitioner had later filed a contempt petition before CIC for non-compliance of its order and also wrote a letter to the Chief Information Commissioner, seeking his indulgence for compliance of impugned order.

The Court ruled that citizens have an overriding right to information in possession of the State and public agencies. The 'RTI Act, 2005' seeks to promote transparency, arrest corruption and to hold the Government and its instrumentalities accountable to the governed. This spirit of the Act must be borne in mind while construing its provisions especially S. 8 of the Act, which is a restriction of this fundamental right should not be interpreted in a manner as to shadow the very right itself. Access to information under S. 3 is the rule and exemptions under S. 8 the exception.

It stated that exemption from releasing information is granted if it would impede the process of investigation or the prosecution of offenders. Mere existence of an investigation process cannot be a ground for refusal of information. The authority withholding information must show satisfactory reasons why release of information would hamper the investigation process. Such reasons should be germane and the opinion of the process being hampered should be reasonable and based on some material.

It held that adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is

unwarranted. S. 8(1)(h) and other such provisions would become the haven for dodging demands for information.

The Court found that the orders of the 3 respondents (PIO, FAA & CIC) did not reflect any reasons, why the investigation process would be hampered. ....Recovery in tax matters, in the usual circumstances, is a time consuming affair, and to withhold information till that eventuality, after the entire proceedings, despite the ruling that investigations are not hampered by information disclosure is illogical. The petitioner's grouse is all the more valid since he claims the information to be of immense relevance, to defend himself in criminal proceedings.

The PIO / FAA had not purported to be aggrieved by the order of CIC as far as it directs disclosure of materials; nor have they sought for its review.... They were asked to disclose to the information seeker – within 2 weeks – the requested materials available with them and forming the basis of notice under the Income Tax Act. The order of the CIC in so far as it withheld information until tax recovery orders are made, was set aside.

The Court took serious note of the 2-year delay in releasing information.... but as requested by the petitioner, did not issue a direction to CIC to initiate penal action against the PIO u/s 20, because the petitioner had not been able to demonstrate that the information was *malafidely* denied.

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## **HIGH COURT OF DELHI AT NEW DELHI**

Director of Income Tax (Investigation) and Anr. vs. Bhagat Singh and Anr.

LPA 1377/2007 Dt. 17.12.2007

The aforesaid decision of a single judge of the High Court came up as an appeal before a two-judge bench (including the Chief Justice) of the Court. The appeal was allowed.

It found that the information requested can be supplied as necessary investigation on these aspects has been undertaken during last 4 years by the Director of Income Tax (Investigation). In fact proceedings before the said Director have drawn to a close and the matter is now with the ITO (i.e. the Assessing Officer).

It is for the appellant (IT Dept.) to show how and why investigation will be impeded by disclosing information. General statements are not enough. Information has been sought for by the complainant and not the assessed. Nature of information is not such that it interferes with the investigation or helps the assessed. Information may help the respondent (citizen-applicant) from absolving himself in the criminal trial.

In the grounds of appeal it is stated that the appellant is ready and willing to disclose all the records once the same is summoned by the criminal court once the same is summoned by the criminal court where proceedings u/s 498 of the Indian Penal Code are pending. If so, the Court found no reason for not furnishing the requested information at that stage as the investigation process was not going to be hampered in any manner.... and no prejudice

would be caused in any manner to the IT Department.... The appeal was found to be without merit and, accordingly, dismissed.

Since the time for furnishing information was expiring on the day of the decision, the time for furnishing the information was extended by one week.

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## **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Union Public Service Commission vs. Central Information Commission and Ors.

WP(C) No. 17853/2006 Dt. 17.04.2007

An RTI application had been filed with the PIO of the Union Public Service Commission (UPSC) for disclosure of cut-off marks of the optional subjects and general studies of the Civil Services (Preliminary) Examination, 2006. Disclosure of model answers to each series of questions of all the subjects was also sought.

UPSC denied disclosure of the information stating that it was in the nature of crucial secrets and constituted its intellectual property [within the meaning of S. 8(1)(d) of the Act]. There was no public interest involved in its disclosure. The disclosure would undermine the integrity, strength and efficacy of the competitive public examination and that it was only a screening test and it had been specifically notified that no mark sheets would be supplied to candidates and that no correspondence would be entertained in this regard. The 1<sup>st</sup> appeal to UPSC was also rejected, which incidentally CIC directed be disposed of within a week from the date it received several complaints in the matter u/s 18(1)(b).

In its full bench decision on the 2<sup>nd</sup> appeal, CIC directed UPSC to (i) disclose the cut-off marks and (ii) the marks assigned to each of the applicants of the said examination – in both the papers – within 2 weeks of the decision.

The decision went on to state that (iii) UPSC shall examine and consider u/s 8(1)(d) of the Act, the disclosure of the scaling system as it involves larger public interest in providing a level playing field for all aspirants and shall place the matter before the competent authority within 1 month from the CIC's order. This would also cover disclosure of model answers, which CIC recommended should, in any case, be made public from time to time. In doing so UPSC shall duly take into account the provisions of S. 9 of the Act. CIC also observed that UPSC is not an organisation that had been kept out of the reach of the Act.

CIC stated that a public authority should not be as possessive of its copyright as an ordinary owner who wants to keep his property to his chest. It also observed that the power of a CPIO does not extend to rejecting a request if the infringement of copyright involved is belonging to the State. Even S. 8(1)(d) of the Act mandates the competent authority to order disclosure of information in the larger public interest.

Since arguments were advanced at length on the question of the scaling method being secret and its public disclosure leading to undermining of the examination system, UPSC was directed by the Court (20.03.2007) to file a note prepared by an expert to indicate how the disclosure of marks assigned would undermine the scaling system – to be filed in a sealed cover. The court observed that the scaling methodology is already known to the public because of its disclosure earlier by UPSC before the Supreme Court and there was nothing new mentioned about the methodology in the contents of the sealed cover.

UPSC's argument about coaching institutes fielding dummy candidates and undermining the examination system was not accepted, for the scaling methodology was thought to take care of this issue and the coaching institutes would not know the number of candidates appearing for each optional subject, or what their performance would be in each paper. The cut-off marks, because they are not pre-fixed, would also not be known. The examination for each year being independent, the data of one year would have no bearing on the data of the next year.

The event about which information has been sought is already over. Final selection would be based entirely on the Main Examination and the Interview. Hence there is no harm in disclosing the information requested. The scaling system already stands disclosed in UPSC's affidavit filed before the Supreme Court. Disclosure of model answers (though UPSC has some right over them) would be in larger public interest. Candidates have the right to know where they went wrong.

Taking cover under S. 8(1)(d) of the Act was stated to be inappropriate. Firstly, the information sought does not fall within the expression of "intellectual property" Since this information pertaining to one even had no bearing on next years' examination, disclosure would no harm the competitive position of any 3<sup>rd</sup> party. UPSC being a public body is required to conduct itself in a fair and transparent manner. It would also be in public interest that this fairness and transparency is displayed by revealing the information sought.

S. 8(2) of the Act allows disclosure of information which can be withheld in larger public interest. Disclosure of information as directed by CIC does not in any way harm the protected interests of UPSC or any 3<sup>rd</sup> party. CIC has approached the matter in the correct perspective. Its Directions (i) and (ii) were thought to call for no interference except that there is only one cut-off mark – which is the total of raw general studies marks and scaled optional paper marks. This cut-off needs to be disclosed. As for (iii), the Court ordered even the model answers to be disclosed. Nothing further needs to be done about disclosure of the scaling system, which already stands disclosed.

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## **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Union Public Service Commission vs. Shiv Shambhu and Ors.

WP(C) No. 17853/2006 Dt. 17.04.**2007**

The aforesaid decision of a single judge of the High Court came up as an appeal before a two-judge bench (including the Chief Justice) of the Court. The appeal was allowed. The 2-



judge bench granted a stay to the earlier decision pending hearing of the appeal and a decision on it.

CIC was not a respondent in the hearing of this appeal, but its decision and the single judge's reference to its decision was referred to.

UPSC's counsel reiterated its earlier submissions before the single judge. The 2-judge bench was also given in a sealed cover, 3 notes carrying: the details of the scheme of the Civil Services (Preliminary) Examination; the scaling methodology used by UPSC; and an explanation about how the disclosure of individual marks, cut-off marks and solution keys in respect of the said examination can lead to deciphering the scaling formulation thus undermining the efficacy of the system.

The Court observed that the documents submitted in a sealed cover were not secret or of a type whose disclosure would not be in the public interest.

It agreed with the contention of the single judge that the scaling methodology already stood disclosed by UPSC to the Supreme Court and was therefore in the public domain.

With regard to UPSC's contention that scaling formulation could be deciphered first once the cut-off marks and solution keys in respect of individual subjects are disclosed the Court stated that such information regarding an already conducted examination would not enable manipulation of results of a preliminary examination in future.

The argument that coaching institutes would misuse such information and skew results also did not find favour with the Court, which maintained that the said institutes cannot anticipate the levels of difficulty in a particular subject or correctly predict what the overall performance of the candidates in a particular subject is going to be. Further, it is only a preliminary examination used to shortlist candidates 10 – 12 times the number of advertised posts and whose results do not in any way affect the results of the main examination.

It also did not find UPSC's apprehension well-founded that disclosing the working of the scaling methodology for the said exam would compromise merit and candidates with less merit would be selected.

The earlier order was affirmed and the appeal was found without merit. The stay order granted earlier was vacated.

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## **HIGH COURT OF DELHI**

LPA 14/2008 Dt. 11.01.**2008**

Manor Singh vs. NTPC Ltd. & Anr

The decision of a single judge of the High Court came up as an appeal before the Chief Justice of the Court. The earlier writ petition of the applicant had been dismissed by the

single judge. The appellant was aggrieved by the response he received from NTPC Ltd. Pursuant to the order passed by the CIC. The appeal was allowed.

The appellant made an application for copies of documents which CMD, NTPC had received for taking a decision. The CPIO informed the applicant that the information sought was exempt under S. 8(1)(j) of the Act. The applicant was only told that the CMD had scrutinized all the issues raised by the appellant and after thorough consideration of all the issues, it was not possible to grant the relief specified by the applicant.

CPIO and AA had also maintained that there were no records on the basis of which the above reply was sent. Yet, CIC maintained that when a decision of the CMD is conveyed, it should have been based on some noting or decision given by him in writing.

CIC stated that this exemption u/s 8(1)(j) applies only if an applicant seeks information of a personal nature of a third party, not his own. The CPIO was asked, therefore, to make one ore effort to find out whether any record of the noting or decision is available and intimate the result of the same to the applicant within 15 days of the decision.

To this the applicant received a communication from NTPC referring to the CIC order that there was no written record in the CMD's office which led to passing the order. The Meet the CMD Forum is an informal / unstructured redressal procedure for which no background documentation is done.

CIC noted that of no document was available, there was no question of supplying such document ot the applicant. The single judge had appreciated this fact and ruled that there can be no direction for furnishing such information.

The Chief Justice found no error in this judgment. The appeal was dismissed.

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## **IN THE HIGH COURT OF CALCUTTA**

WP No. 22176/2007 Dt. 28.03.2008

Pritam Rooj vs. University of Calcutta & Ors.

The applicant was an examinee asking for access to an evaluated answer sheet under RTI Act, 2005. The petitioner an otherwise meritorious student was aggrieved by being awarded 28 out of 100 in Part II of his Bachelor's Degree examination. This had caused his exclusion from the final list of selection for a phd programme.

Hence, the petitioner asked for his answer script in appropriate format to the SPIO of the University. The application was rejected.

The Court observed that the application was not dealt with in a manner provided by the Act. The reply was found to be rather stereotypical. No reasons were conveyed and this was in contravention of the principles of natural justice. The PIO had not furnished particulars of the appellate authority either. Hence the petition (under Article 226 of the Constitution) was

entertained by the Court instead of directing the petitioner to exhaust the alternative remedy under the Act.

Though not conveyed to the applicant one of the reference for the University's decision was a n order of the CIC that in regard to public examinations, conducted by institutions established by the Constitution or by an enactment which have an established system, and by their own rules prohibit disclosure of evaluated answer sheets or where such disclosure would result in rendering the system unworkable in practice, a citizen cannot seek disclosure of answer sheets under the Act. Yet the Commission had recommended giving back evaluated answer sheets a regular practice.

The University asserted that CIC being a superior authority, its decision is binding on the SPIO. Whereas the petitioners plea has been that the information requested by him falls within the definition of information under the Act.

The Court found all the arguments regarding the applicability of various exemptions u/s 8(1) inadmissible and ruled that SPIO's rejection of the request cannot be sustained. Hence, the University was asked to proceed immediately to offer inspection of the paper that the petitioner sought. It set aside the SPIO's order and issued a writ of Mandamus.

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**WRIT PETITION (CIVIL) NOS.8396/2009, 16907/2006, 4788/2008, 9914/2009, 6085/2008, 7304/2007, 7930/2009 AND 3607 OF 2007**

Date of Decision : 30th November , 2009.

Deciding a bunch of petitions, the Delhi High Court has declared that a copy of the FIR can be given under the Right to Information Act unless it is shown in strict terms as to the effect that giving such information would hamper investigation. The High Court was *inter alia* ruling on the writ petition filed by the Police before the High Court challenging the order of CIC where the police had been directed to provide a copy of FIR relating to Balta incident. The High Court however declined the disclosure of post-mortem report holding that release of such details would hamper pending investigations.

The High Court declared as under;

Mere pendency of investigation, or apprehension or prosecution of offenders is not a good ground to deny information. Information, however, can be denied when furnishing of the same would impede process of investigation, apprehension or prosecution of offenders. The word "impede" indicates that furnishing of information can be denied when disclosure would jeopardize or would hamper investigation, apprehension or prosecution of offenders. In Law Lexicon, Ramanatha Aiyar 2nd Edition 1997 it is observed that the word " 'impede" is not

synonymous with 'obstruct'. An obstacle which renders access to an inclosure inconvenient, impedes the entrance thereto, but does not obstruct it, if sufficient room be left to pass in and out. 'Obstruct' means to prevent, to close up."

The word "impede" therefore does not mean total obstruction and compared to the word 'obstruction' or 'prevention', the word 'impede' requires hindrance of a lesser degree. It is less injurious than prevention or an absolute obstacle. Contextually in Section 8(1)(h) it will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or prosecution of offenders. However, the impediment, if alleged, must be actual and not make belief and a camouflage to deny information. To claim exemption under the said Sub-section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis. Onus under Section 19(5) of the RTI Act is on the public authority. The Section does not provide for a blanket exemption covering all information relating to investigation process and even partial information wherever justified can be granted. Exemption under Section 8(1)(h) necessarily is for a limited period and has a end point i.e. when process of investigation is complete or offender has been apprehended and prosecution ends. Protection from disclosure will also come to an end when disclosure of information no longer causes impediment to prosecution of offenders, apprehension of offenders or further investigation. 87. FIR and post mortem reports are information as defined under Section 2(f) of the RTI Act as they are material in form of record, documents or reports which are held by the public authority.

First Information Report as per Section 154 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Code, for short) is the first information recorded in writing by an officer in-charge of a police station and read over to the informant. The substance of the said information is entered in a book/register required to be maintained as per the form prescribed by the State Government. Copy of the First Information has to be furnished forthwith and free of cost to the informant and under section 157 of the Code the same has to be sent forthwith to the Magistrate empowered to take cognizance of the said offence. There are judicial decisions in which FIR has been held to be a public document under the Evidence Act, 1872.

Under Sections 74 and 76 of the Evidence Act, 1872 a person who has right to inspect a public document also has a right to demand copy of the same. Right to inspect a public document is not an absolute right but subject to Section 123 of the Evidence Act, 1872. Inspection can be refused for reasons of the State or on account of injury to public interest.

Under Section 363(5) of the Code any person affected by a judgment or an order passed by a criminal court, on an application and payment of prescribed charges is entitled to copy of such judgment, order, deposition or part of record. Under Sub-section (6) any third person who is not affected by a judgment or order can also, on payment of a fee, and subject to

such conditions prescribed by the High Court can apply for copies of any judgment or order of the criminal court.

As regard the disclosure of post-mortem report, the High Court declared as under;

However, disclosure of post mortem reports at this stage when investigation is in progress even without names of the doctors falls in a different category. It has been explained that post mortem reports contains various details with regard to nature and type of injuries/wounds, time of death, nature of weapons used, etc. Furnishing of these details when investigation is still in progress is likely to impede investigation and also prosecution of offenders. It is the case of the petitioners that enquiries/investigation are in progress and further arrests can be made. Furnishing of post mortem report at this stage would jeopardize and create hurdles in apprehension and prosecution of offenders who may once information is made available take steps which may make it difficult and prevent the State from effective and proper investigation and prosecution.

The High Court, in coming to this conclusion, repelled the argument of the Government that information could be denied even on the grounds not provided for under the Right to Information Act. The High Court declared as under;

It was urged by Mr. A. S. Chandhiok, learned Additional Solicitor General of India that Section 8(1) of the RTI Act is not the complete code or the grounds under which information can be refused and public information officers/appellate authorities can deny information for other justifiable reasons and grounds not mentioned. It is not possible to accept the said contention. Section 22 of the RTI Act gives supremacy to the said Act and stipulates that the provisions of the RTI Act will override notwithstanding anything to the contrary contained in the Official Secrets Act or any other enactment for the time being in force. This non-obstante clause has to be given full effect to, in compliance with the legislative intent. Wherever there is a conflict between the provisions of the RTI Act and another enactment already in force on the date when the RTI Act was enacted, the provisions of the RTI Act will prevail. It is a different matter in case RTI Act itself protects a third enactment, in which case there is no conflict. Once an applicant seeks information as defined in Section 2(f) of the RTI Act, the same cannot be denied to the information seeker except on any of the grounds mentioned in Sections 8 or 9 of the RTI Act. The Public Information Officer or the appellate authorities cannot add and introduced new reasons or grounds for rejecting furnishing of information.

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## **IN THE HIGH COURT OF DELHI AT NEW DELHI**

SUBJECT:

Right to Information Act, 2005

W.P.(C) 8228/2007

Date of Decision: 16th November, 2007

SURESH CHAND GUPTA ..... Petitioner Through Ms. Suman Chauhan, Advocate.

Versus DEPUTY COMMISSIONER OF POLICE and ANR. .... Respondent

Through Mr. Joginder Sukhija, Advocate for respondent No.1.

Mr. Justice S. Ravindra Bhat: (OPEN COURT)

## O R D E R

The petitioner approached this Court with a petition to direct the first respondent to intimate outcome of the enquiry, which had lasted for six years. This Court directed the first respondent that such intimation should be given to the petitioner. Pursuant to this, a letter dated 2.3.2006 was received by him stating that the allegations levelled against Inspector Sukh Ram could not be substantiated.

The petitioner thereafter approached the Public Information Officer (PIO) under provisions of the Right to Information Act, 2005. The said authority by order dated 5.3.2007 partly granted the request and allowed inspection. The Petitioner, thereafter appears to have visited the office of the respondents and later addressed a letter on 26.3.2007 contending that he was not conversant in English, and could not properly inspect the records claiming to be aggrieved by the inaction of the respondent directions have been sought in these proceedings.

It was contended on behalf of the respondent that the petitioner was, in fact, permitted inspection, as a sequel to the order dated 5.3.2007. In case he was aggrieved, he ought to have appealed under Section 19 of this Act. 6. Learned counsel also endeavoured to contend that the present writ petition is not maintainable as the petitioner did not disclose certain relevant facts. .... There is no dispute that the petitioner's request for inspection of the files was granted. In these circumstances, the contention that he ought to approach the appellate authority under Section 19,

in my considered opinion is an untenable proposition. In fact, learned counsel advertence to Section 7, in my mind, strengthens the petitioner's claim to be provided the facility of assistance of counsel and someone conversant in English.

The object of the Act is to provide access to information in the custody of the executive agencies. Undoubtedly, the PIO was of the opinion that the records of which inspection have been sought, I were not of the kind which cannot be granted access to. If the petitioner, for some reasons, felt inhibited due to his not being fluent in English, denial of appropriate assistance in fact would have resulted in withholding access to information. Surely, that is not the object of the Act or even the order. In these circumstances, the respondents should grant the petitioner's request.

Accordingly, the respondent No.1 is directed to permit inspection of the concerned records by the petitioner, who can be accompanied by his counsel or an authorized representative.

In view of the above findings, the petitioner shall be present before the DCP (Vigilance) on **21st November, 2007** at 11.00 A.M. with his counsel or authorized representatives and permitted inspection of the concerned records...

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In a recent decision, **the Delhi High Court** has dismissed the writ petition filed by a person against the order of the Central Information Commission. In its order the Commission had directed the Police to provide the information relating to all criminal complaints and pending matters against the person. It was argued that the Commission by allowing such information had made an unwarranted invasion in his right of privacy. The High Court, however, was not impressed and the petition was dismissed.

Relying upon a decision of Supreme Court, the High Court observed that the right to privacy was not an absolute right and that the right to information was a part of Right to Freedom of Speech and Expression. In reference to Section 8(1)(j) of the Right to Information Act, which recognises the exception of privacy to the grant of information, the High Court observed that the said provision "recognizes that both rights are important and require protection and in case of conflict between the two rights, the test of over-riding public interest is applied to decide whether information should be withheld or disclosed."

The High Court also agreed to the 'test of public interest' applied by the Commission 'to determine and decide whether the information sought should be disclosed or disclosure will amount to unwarranted invasion of right to privacy.' Also noting the fact that the information sought being related "to criminal complaints filed against the petitioner, FIRs registered against him, their current status and whether warrants were issued against some persons, police reports on execution of warrants and their current status", it was already "part of public records including court records".

The decision of the Supreme Court in *Raj Gopal v. State of Andhra Pradesh* (1994) 6 SCC 632 was also relied upon where it was held as under;

(1) A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters.

(2) None can publish anything concerning the above matters without his consent – whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned. But a publication concerning the above aspects becomes unobjectionable, if such publication is based upon public records including court records. Once something becomes a matter of public record, the right of privacy no longer exists. The only exception to this could be in the interest of decency.

(3) In the case of public officials, it is obvious that right of privacy or for that matter, remedy of action for damages is simply not available with respect to their acts and conducts relevant to the discharge of their official duties. This is so even where the publication is based upon the acts and statements that are not true unless the official establishes that the publication was made with reckless disregard for truth.

(4) So far as the Government, local authority or other organization and institution exercising governmental power are concerned, they cannot maintain suit for damages for defaming them.

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